75-7881

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA and SOUTHERN CONFERENCE OF TEAMSTERS,
Petitioner,

vs.

OLIVER I. SABALA, Individually and on Behalf of All Others Similarly Situated, and LEONARD M. RAMIREZ,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

L. N. D. WELLS, JR.
G. WILLIAM BAAB
Suite 200—8204 Elmbrook Drive
Dallas, Texas 75247

DAVID PREVIANT
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203
Counsel for Petitioner

Of Counsel

MULLINAX, WELLS, MAUZY & BAAB, INC.
Suite 200—8204 Elmbrook Drive
Dallas, Texas 75247

GOLDBERG, PREVIANT & UELMEN
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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Cases Cited

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

Petitioners, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (hereinafter "International") and Southern Conference of Teamsters (hereinafter "Southern Conference") respectfully pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in the above consolidated cases entered upon August 4, 1975 (extension of time for filing this Writ granted until December 2, 1975).

The facts of these consolidated cases and questions presented herein are, in important respects, similar and related to those pre-

sented in *International Brotherhood of Teamsters v. United States of America* (No. 75-636, October Term 1975) and *Southern Conference of Teamsters v. Rodriguez* (No. 75-715, October Term 1975).[1]

OPINIONS BELOW

The Opinion of the Court of Appeals in the cases here presented is reported at 516 F.2d 1251 (5th Cir. 1974) and reproduced in the Appendix hereto (A. pp. A-51-90).[2]

The Trial Court's Opinion (reported at 362 F.Supp. 1142), subsequent modification thereof and Judgment are reproduced in the Appendix hereto at App. pp. A-1-50.

JURISDICTION

The Judgment of the Court of Appeals herein was entered upon August 4, 1975. (App. pp. A-91-92). Thereafter, by order of this Court entered upon October 30, 1975, the time for filing this petition was extended until December 2, 1975. This petition is filed within the time fixed by this latter date. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1

Does a union violate 42 U.S.C. § 1981, solely by the establishment and continuation of a seniority system which provides

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[1] Consolidated in one petition with *Southern Conference of Teamsters v. Herrera* and *Southern Conference of Teamsters v. Resendis*.

[2] The Appendix hereto is presented in an appended volume, designated "App.".

job seniority from date of entry into the bargaining unit, where the union proposes seniority from the date of discrimination for employees who have been discriminatorily excluded from the bargaining unit by the employer?

2

Whether an International Union can be held liable under 42 U.S.C. 1981 for seniority rules incorporated in a locally-negotiated portion of a collective bargaining agreement, where an appellate court has held that the same International Union is not liable upon identical facts in an identical case?

3

Whether alleged discriminatees in a 42 U.S.C. 1981 case should, as part of the relief granted therein, be awarded job seniority greater than the seniority they would have had "but for" the employer's discrimination against them?

STATUTORY PROVISIONS

Title 42 U.S.C. § 1981 is reproduced in the Appendix herein at App. p. A-93.

STATEMENT OF THE CASE

A

Nature of the Case

The consolidated cases here presented for review are, in all important respects, identical to those presented in *International Brotherhood of Teamsters v. United States* (No. 75-636, Oc-

tober Term 1975) and *Southern Conference of Teamsters v. Rodriguez* (No. 75-715, October Term 1975). Collective bargaining agreements between local unions and freight industry employers are in each instance the basis for claims that union entities have violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and 42 U.S.C. § 1981. Here, because the plaintiffs refused to comply with Title VII jurisdictional prerequisites, the claims against union entities were brought solely under 42 U.S.C. § 1981.[3]

In these cases, as in *Southern Conference of Teamsters v. Rodriguez, supra,* plaintiffs were "city" drivers working at the Houston terminal of their employer Western Gillette, Inc., complaining that Western Gillette had discriminatorily denied to them "road" driver jobs and that this discriminatory denial of road work has been perpetuated by the seniority system set out in collective bargaining agreements in effect at the Houston terminal. The consolidated cases proceeded as a class action on behalf of "all Mexican-Americans and Blacks currently employed by Western Gillette during the pendency of this action as city drivers in Houston, Texas." (App. pp. A-11-13).

As in *International Brotherhood of Teamsters v. United States* and *Southern Conference of Teamsters v. Rodriguez,* the Trial Court here found that the responsibility for hiring and initial job assignment rested solely with the employer, Western Gillette. Thus, plaintiffs' claims and the Fifth Circuit's opinion, as to the union entities involved, were restricted solely to consideration of a theory of "lock-in" discrimination by the contractually-created seniority system which governed job bidding and lay-off rights of road and city motor freight employees. (App. pp. A-10-11, 57).

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[3] The Trial Court properly dismissed all Title VII claims against union defendants because of plaintiffs' failure to file a sworn charge against them, as required by Title VII. (App. pp. A-14-15). Plaintiffs did not appeal that ruling.

B

Undisputed Facts as to the Seniority System

As in *Southern Conference of Teamsters v. Rodriguez* and *International Brotherhood of Teamsters v. United States*,[4] plaintiffs and the class members they represent were at all relevant times city motor freight employees (drivers) of Western Gillette; located at that employer's Houston, Texas terminal. Each had been originally hired in that capacity.

The terms and conditions of employment, including wages, hours and seniority rights for city and road motor freight employees of Western Gillette were contained in two separate collective bargaining agreements covering, respectively, city employees on the one hand and road employees on the other.

Under these separate collective bargaining agreements, city drivers are those performing the functions necessary to operation of a local pick-up and delivery freight service in the immediate Houston area. Road employees are exclusively long haul drivers. Under the contract defining their terms and conditions of employment, city employees are all paid the same hourly wage, slightly higher than that paid to road employees. Fringe benefits for the two groups of employees (city and road) are identical. City employees have a weekly guarantee of forty (40) hours, with time and one-half and in some instances double time for hours per week over that figure. Road employees have a weekly guarantee and do not receive premium pay for overtime work. Despite the absence of a weekly hour guarantee, many road employees nevertheless have an opportunity to earn a larger annual salary than that paid to city employees by working longer hours (sometimes up to 70 hours per week).

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[4] Of course, in *International Brotherhood of Teamsters v. United States, supra,* the Government sued on behalf of individuals who were city motor freight employees.

At the same time, road employees bear many of their own living expenses incurred out of town, work longer hours and are away from their home and families for many days at a time. Thus, while road employment generally affords employees the opportunity of work for higher earnings, many employees choose and prefer to do city work. In no sense is there a "line of progression" from city to road jobs, nor can city jobs (affording an average yearly earning of more than $13,000.00) be characterized as "low paying" or "menial."[5]

The seniority rules at issue were negotiated by area (here, Southern Conference) union committees into area contract supplements, following negotiation of a "Master Agreement" applicable nationwide. They provide for separate job bidding and lay-off seniority for city motor freight employees and road motor freight employees with Western Gillette. Supplemental agreements, which govern job seniority rules of city and road employees, are negotiated by an area (in this case Southern Conference) committee, operating on the basis of written "powers of attorney" given to area committees by local unions, which are the exclusive collective bargaining representatives of both city and road employees.

Historically, both because of patterns of organization of motor freight employees and because of decisions rendered by the National Labor Relations Board,[6] there have existed separate

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[5] See discussion, pp. 13-14, *infra*.

[6] See *In re Georgia Highway Express*, 150 NLRB 1649 at 1651, where the Board held:

> ". . . The Board has long held that local drivers and over-the-road drivers constitute separate appropriate units where there is shown to be clearly defined, homogeneous, and functionally distinct groups which separate interests which can effectively be represented separately for bargaining purposes. . . .
>
> In view of the different duties and functions, separate supervision, and different bases of payment, it is clear that the over-the-road drivers have divergent interests from those of the employees in the unit sought and should not be included in that unit."

collective bargaining units for road employees on the one hand and city employees on the other. One of the results of this historical pattern of separate collective bargaining units has been the development of separate collective bargaining agreements covering city employees on the one hand and road employees on the other. Separate agreements at the Houston terminal for Western Gillette's city employees and road employees provided for job bidding and lay-off seniority for road employees on the one hand and city employees on the other beginning with the date of entry of the particular employee into that particular (city or road) bargaining unit. Employees in both city and road job classifications have historically and continuously preferred this separation of road and city job bidding and lay-off seniority.

The seniority system requires that when Western Gillette permits an employee to transfer between the road and city job classifications, that employee maintains his company seniority for fringe benefit purposes, but assumes job bidding and lay-off seniority in his new job only from the date of employment therein. The uncontradicted evidence at trial was that seniority rules apply to job applicants and employees regardless of race or national origin. Thus, any city employee, whether Anglo, Mexican-American or black is required to give up his city job bidding and lay-off seniority when moving to a road job, assuming road job bidding and lay-off seniority only from the date of entry into the road bargaining unit job classification. Trial evidence showed that numerous employees had chosen to do just that—give up their city job seniority and transfer to the road, assuming road job seniority only from the date of employment on the road.

The contract seniority system, including the rules governing job bidding and lay-off seniority, has never been used by union entities to deny to individuals discriminatorily denied employment on the road (or for that matter in city job classifi-

cations) job bidding and lay-off seniority from the date they would have been employed in such a classification "but for" unlawful discrimination against them. To the contrary, union entities involved here consistently insisted upon application of a "rightful place" seniority concept for those individuals who allege and prove discriminatory denial of employment in, *inter alia*, the road motor freight employee classification.

C

The Trial Court's Decision

The Trial Court determined that Western Gillette had discriminatorily denied plaintiffs and the class employment as road drivers, both by original hire and transfer policy. Having so concluded, the Trial Court further found that the contract seniority system discriminatorily "locked-in" minority city drivers to their city jobs by requiring that they give up their city job seniority in transferring to road positions. (App. pp. A-21-23). The International Union and Southern Conference were held to have violated 42 U.S.C. § 1981 by virtue of their "intricate involvement in the contract negotiations that led to the agreements in question."[7] Noting that the seniority system in effect was not facially discriminatory, the Trial Court nevertheless noted that "this is not enough of an answer. These union organizations have a duty under Section 1981 to inquire into the effect of the contract provisions when it is reasonable to assume, as it is here, that they might lead to discrimination. Unions under Section 1981 have an affirmative obligation to protect members from illegal discrimination. This duty includes the responsibility to determine if the agreements they help negotiate lock-in any such past discrimination." In so holding, the Trial Court omitted reference to trial evidence

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[7] Citing *Sagers v. Yellow Freight Systems, Inc.*, 4 FEP Cases 1297 (N.D.Ga. No. 13510, July 21, 1972).

showing that numerous individuals had, nevertheless, transferred from the city to the road driver classification, accepting as a condition of such transfer loss of city job seniority. Implicitly acknowledging that neither Southern Conference nor International was the collective bargaining representative of plaintiffs and the class, the Trial Court further concluded that no union entity (including the local union) had breached its duty of fair representation to plaintiffs or the class. (App. p. A-30). Having so found, the Trial Court assessed all back pay due against Western Gillette, but awarded seniority relief to plaintiffs and the class based upon the existence and filling of road vacancies throughout Western Gillette's terminals within the jurisdiction of the Southern Conference of Teamsters.[8]

The Trial Court based this award of seniority, not upon a finding that plaintiffs and the class would have been awarded every road job within the Southern Conference "but for" Western Gillette's discrimination in filling of road jobs by hiring or transfer, but rather upon the existence of "modified system seniority" within the Southern Conference area and "changes of operation" which had occurred in the same area. It was uncontradicted that neither "modified system seniority" nor "changes of operation" affected the filling of road vacancies—either by hiring or transfer.

D

The Court of Appeals' Opinion

The Court of Appeals for the Fifth Circuit affirmed the Trial Court's finding of violation on behalf of all union en-

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[8] The Southern Conference's jurisdiction extends from Florida to Texas, including the states of Florida, Georgia, Tennessee, Mississippi, Alabama, Louisiana, Arkansas, Oklahoma, and Texas.

tities, and the seniority relief granted by the trial court. Further, relying upon an inapposite decision involving hiring discrimination in a plant, line-of-progression job classification context[9] the Fifth Circuit remanded to the Trial Court for further consideration of the latter's finding that Western Gillette alone was responsible for back pay to plaintiff and the class. (App. pp. A-84-86).

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[9] *Johnson v. Goodyear Tire & Rubber Co.*, 491 F.2d 1394 (5th Cir. 1974). See further discussion, *infra*, pp. 13-14.

REASONS FOR GRANTING THE WRIT

I

The Seniority System Is a Legal, "Bona Fide System."

The seniority rules here involved are identical to those in *International Brotherhood of Teamsters v. United States* (No. 75-636, October Term 1975), and *Southern Conference of Teamsters v. Rodriguez* (No. 75-715, October Term 1975). "Seniority has become of overriding importance, and one of its major functions is to determine who gets or who keeps an available job." *Humphrey v. Moore*, 375 U.S. 335 at 346-47 (1964). That is true as to both city and road employees. Seniority rules at issue here and in the other cases which we mentioned affect hundreds of thousands of employees in the freight industry. Litigation concerning the rules' legality has proliferated beyond control,[10] without final resolution. The legality of the seniority system and the liability of union entities negotiating for it thus presents a problem which must be resolved by this Court. Here, as in *Rodriguez*, the Fifth Circuit concluded that union defendants violated 42 U.S.C. §1981 because the contract seniority system does not automatically provide road bargaining unit seniority for black and Mexican-American city drivers whom Western Gillette had discriminatorily excluded from the road bargaining unit. The absence of such a specific provision in the city and road contracts applicable at the Houston terminal, along with the contract seniority rules which provided for road job seniority beginning with the date of a particular employee's entry into the road bargaining unit, was deemed discriminatorily to "lock-in" to city jobs Mexican-

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[10] Nearly one hundred such cases are pending or have been decided by lower courts throughout the federal judiciary system. See Fn. 26 of Petition of International Brotherhood of Teamsters, *International Brotherhood of Teamsters v. United States* (No. 75-636, October Term 1975.)

Americans and Blacks whom Western Gillette had discriminatorily excluded from road employment. Thus, the theory upon which the Fifth Circuit (and here the Trial Court) found the contract rules and union defendants violative of 42 U.S.C. 1981 is precisely the same as in *Rodriguez*.

This Court has not fully delineated the substantive prohibitions, guarantees and available remedies of 42 U.S.C. §1981. In *Johnson v. Railway Express Agency*, — U.S. —, 44 L. Ed. 2d 295 (May 19, 1975), the Court held that the filing of a charge under Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.*, did not toll the applicable statute of limitations as to a claim under 42 U.S.C. 1981. And in so holding, this Court stated "We generally conclude, therefore, that the remedies available under Title VII and Section 1981, although related, and although directed to most of the same ends, are separate, distinct, and independent." (*Id.* at 302). Various Circuit Courts have concluded that the prohibitions and remedies available under 42 U.S.C. 1981 are in important respects almost identical to those of Title VII.[11] On the other hand, the Court of Appeals for the District of Columbia has stated without full explication, that "Section 1981 and Title VII, in truth, provide for . . . radically different schemes of enforcement and differ . . . widely in their substantive scopes . . ." *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979 (D.C. Cir. 1973).

While it may now be taken as well-established that Title VII prohibits facially neutral policies which "freeze an entire generation of (minority) employees into discriminatory patterns that existed before the Act (Title VII),[12] it is not at all clear

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[11] *E.g., Guerra v. Manchester Terminal Corp.*, 498 F.2d 641 (5th Cir. 1974); *Waters v. Wisconsin Steel Works of International Harvester Co.*, 427 F.2d 476 (7th Cir. 1970), cert. den. 400 U.S. 911 (1970).

[12] *United States v. Jacksonville Terminal Co.*, 451 F.2d 418 at 445 (5th Cir. 1971), cert. denied 406 U.S. 906 (1972).

that Section 1981 is violated merely by the existence of seniority rules, neutral both on their face and in their origin, which are preferred by the vast majority of employees, including black and Spanish-surnamed city employees. This Court has never so held. So that Section 1981's prohibitions and available remedies thereunder can be fully defined, this petition should be granted.

But even assuming that the substance and prohibitions of Section 1981 are identical in all respects to those of Title VII, the Fifth Circuit commits serious error when it holds this contract seniority system illegally discriminatory. The Fifth Circuit's complaint—that the system does not automatically provide for Western Gillette's black and Spanish-surnamed city drivers in Houston to transfer to road jobs taking their full city seniority with them—is misplaced. No seniority system can automatically provide seniority for individuals whom an employer excludes from it. This, the Fifth Circuit itself has recognized.[13] But union defendants here have negotiated and contracted for a provision, in collective bargaining agreements covering Western Gillette's Houston employees prohibiting race or national origin discrimination.[14] Further, union defendants have consistently proposed that minority city drivers who have been discriminatorily denied road employment be awarded the opportunity to transfer to the road, with job seniority in the

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[13] *Franks v. Bowman Transportation Co.*, 495 F.2d 398 (5th Cir. 1974), cert. granted, No. 74-728, October Term, 1974; *Watkins v. Steel Workers*, 516 F.2d 41 (5th Cir. 1975).

[14] The National Master Freight Agreement, part of the agreements covering Houston city and road employees, provides at Article 38 as follows:

> "The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin."

road bargaining unit from the date they would have obtained road employment absent discrimination. No contract seniority system or union can do more than this.

The contract seniority system in effect at Western Gillette's Houston terminal has legitimate, non-discriminatory origins. It is the seniority system that both city and road employees there desire. City jobs are not menial jobs. They pay well, and many employees, both minority and white, prefer them to road jobs. City jobs are not in a line of progression with road jobs. In sum, the seniority system here is wholly distinguishable from a plant, line-of-progression job classification seniority system which draws artificial distinctions within a single bargaining unit and locks minorities into the most menial, low paying jobs which no employee with any choice desires to fill.[15] If there can be a "bona fide seniority system," which Title VII[16] (and by implication Section 1981) recognizes and purports to protect, this system must be one.

This Court must resolve all questions as to the legality of the seniority system at issue.

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[15] See *Quarles v. Phillip Morris, Inc.*, 279 F.Supp. 505 (E.D. Va. 1968); *Local 189, United Papermakers and Paperworkers v. United States*, 416 F.2d 980 (5th Cir. 1969), cert. den. 397 U.S. 919 (1970).

[16] Section 703 of Title VII, 42 U.S.C. 2000e-2, subparagraph (h) provides that "Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system. . . ."

II

The Fifth Circuit's Finding of Liability on Behalf of International Conflicts With Its Own Holdings in Herrera v. Yellow Freight Systems, Inc.[17] and Resendis v. Leeway Motor Freight, Inc.[18]

We have, to the point of redundance, stated that the seniority rules here involved are identical to those in *Herrera v. Yellow Freight* and *Resendis v. Leeway* (see fns. 17 and 18, *supra*). The rules are contained in local contract supplements, covering Western Gillette's Houston city drivers on the one hand and road drivers on the other, and signed by Western Gillette and Teamsters Local Union 988. These contract supplements were, as we have stated, negotiated by an area (Southern Conference) negotiating committee acting upon a "power of attorney" issued by Local Union 988. The International is not, and never has been, collective bargaining representative for Western Gillette's Houston city drivers.

On identical facts, in *Herrera*, the Fifth Circuit wrote: "Because the separate seniority lists (referring to separate job seniority for city drivers on the one hand and road drivers on the other) originate at the Southern Conference level, we find no violation of Title VII by the defendant Teamsters International." 505 F.2d at 68, fn. 2. In *Resendis*, the Fifth Circuit wrote: "We find no violation of Title VII by the defendant Teamsters International." (citing *Herrera*). 505 F.2d at 71, fn. 2.

Neither the Trial Court nor the Fifth Circuit in the instant case explains why the International's obligations should be broader under Section 1981 than under Title VII. *Herrera*

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[17] 505 F. 2d 66.

[18] 505 F.2d 69.

and *Resendis* are plain authority that International has not committed a violation of Section 1981 in regard to the seniority rules at issue. This petition should be granted for the purpose of conforming the instant case to *Herrera* and *Resendis*.

III

The Award of Seniority Relief to Black and Spanish-Surnamed City Drivers Exceeds Seniority They Would Have Had "But For" Discrimination Against Them.

The Fifth Circuit here approved the Trial Court's award to minority city drivers of the right to claim subsequently occurring road vacancies at any of Western Gillette's terminals within the Southern Conference, taking with them road job seniority *not* from the date that the individual would have been hired as a road driver at the Houston terminal "but for" discrimination, but rather from the date *any* individual was hired for a road job at *any* terminal within the Southern Conference following the individual Houston city drivers' possession of road driver qualifications. The Fifth Circuit (and the Trial Court) required no showing that individual Houston city drivers had ever sought road employment, or that such an individual could have obtained a road job at any terminal in the Southern Conference "but for" discrimination. (App. pp. A-75-77).

The determination not to require application for road employment as a prerequisite to the award of seniority relief was based upon the Trial Court's determination that such application by a black or Spanish-surnamed American would have been futile.[19] The award of seniority relief based upon the

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[19] See *Bing v. Roadway Express, Inc.*, 485 F.2d 441 (5th Cir. 1973). See also *Rodriguez v. East Texas Motor Freight, Inc.*, 505 F.2d 41 (5th Cir. 1975).

existence and filling of road vacancies at any of Western Gillette's terminals in the Southern Conference area, rather than just at Houston, was based upon the Court's mistreatment of record evidence concerning "modified system seniority" operative among road drivers in Western Gillette's Southern Conference area and the mechanics of "change of operations" decisions under applicable collective bargaining agreements.

"Modified system seniority," applicable among road drivers in Western Gillette's Southern Conference area by vote of the drivers themselves, simply means that a road driver who is laid off *following* his original hire at a particular terminal may *thereafter* exercise whatever seniority he has at that terminal to bump a less senior road driver at any other terminal within the Southern Conference area. Thus, modified system seniority operates only *subsequent* to original hire, and does not permit or otherwise affect the right of an individual at one terminal to obtain original employment as a road driver at any other terminal within the Southern Conference area.

Similarly, contractual "changes of operations" occur when an employer (in this instance Western Gillette) determines to change its freight operations, necessitating the re-domicile of *already-employed* road drivers. Under applicable collective bargaining agreements, a contractually-created change of operations committee then determines what seniority re-domiciled road drivers will possess at the terminal to which they are moved. Nothing in the "change of operations" process permits an individual at one terminal to obtain original road employment at another.

In short, when the Fifth Circuit and Trial Court granted Houston minority city drivers the right to claim road vacancies with job seniority based upon previous hiring for road employment throughout Western Gillette's Southern Conference area, it gave them road job seniority far in excess of that

which they would have had "but for" Western Gillette's discrimination against them. This fictional, super-seniority award was tied, *not* to a showing of discrimination against the individual *but rather solely to the individual's race or national origin.*

> "Although Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the Act, it certainly did not desire to melt job qualifications having no racially discriminatory ingredient or controlling pre-Act antecedent. In light of Title VII's legislative history, ascribing such an altruistic yet impractical purpose to that legislative body would surely be erroneous—'reverse discrimination' of the most blatant sort." *United States v. Jacksonville Terminal, et al.*, 451 F.2d 418 at 445 (5th Cir. 1971), cert. denied, 406 U.S. 906 (1972).

By giving "all persons . . . the same right . . . to make and enforce contracts (here for employment)" we presume that Section 1981, like Title VII, does not sanction "reverse discrimination." Nevertheless, that is the real effect of the award of seniority relief by the lower courts in the instant case. Houston black and Spanish-surnamed city drivers are given road job rights and seniority relief far beyond what they would have had "but for" discrimination against them. This relief permits them to compete for and hold road jobs against both incumbent road drivers and other individuals (including, no doubt, a substantial number of black and Spanish-surnamed persons) who will hereafter seek road employment throughout Western Gillette's Southern Conference system. This, Section 1981 surely does not intend. Only by the granting of this petition can the Fifth Circuit be required to conform seniority relief accorded Houston minority city drivers to that which they would have had "but for" discrimination against them.

CONCLUSION

This Court must now be aware of the enormity of the common problem reflected by the filing of the petitions in *International Brotherhood of Teamsters v. United States, Southern Conference of Teamsters v. Rodriguez,* the instant petition, and those filed by other parties to these actions below.[20] Accordingly, and especially for the reasons set out herein, this petition for writ of certiorari should be granted.

Respectfully submitted

G. WILLIAM BAAB
L. N. D. WELLS, JR.
8204 Elmbrook Drive, Suite 200
Dallas, Texas 75247

DAVID PREVIANT
6th Floor Midland Bank Building
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

MULLINAX, WELLS, MAUZY &
BAAB, INC.
8204 Elmbrook Drive, Suite 200
Dallas, Texas 75247

GOLDBERG, PREVIANT &
UELMEN
6th Floor Midland Bank Building
211 West Wisconsin Avenue
Milwaukee Wisconsin 53203

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[20] *TIME-DC, Inc. v. United States of America* (No. 75-636, October Term 1975); *Teamsters Local 657 v. Rodriguez,* (No. 75-651, October Term 1975); *East Texas Motor Freight, Inc. v. Rodriguez,* No. 75-718, October Term, 1975; *Leeway Motor Freight, Inc. v. Resendis,* No. . . ., October Term, 1975.

Certificate of Service

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari has this 1st day of December, 1975, been mailed, postage prepaid, to all counsel of record as follows:

Mr. Henry M. Rosenblum
320 Executive Plaza, West
4635 Southwest Freeway
Houston, Texas 77027

Mr. Sidney Ravkind
Mandell & Wright
19th Floor
First National Life Bldg.
Main at Rusk Street
Houston, Texas 77002

Mr. A. J. Harper, II
Fulbright & Crooker
Bank of the Southwest Bldg.
Houston, Texas 77002

Theodore W. Russell
Russell & Schureman
1545 Wilshire Blvd.
Los Angeles, California 90017

Mr. James P. Wolf
Dixie, Wolf & Hall
Suite 401—609 Fannin Street Bldg.
Houston, Texas 77002

.....

G. William Baab